Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

No. 84-48

In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

v.

HUGHES ANDERSON BAGLEY

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI
FILED JULY 10, 1984
CERTIORARI GRANTED NOVEMBER 13, 1984

27 pp & foldouts

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*The opinions of the district court and the court of appeals are printed in the appendices to the petition for a writ of certiorari and have not been reproduced.

RELEVANT DOCKET ENTRIES
CRIMINAL DOCKET
U.S. DISTRICT COURT
BAGLEY, HUGHES ANDERSON (JR.)

OFFENSES CHARGED

18:3 accessory after the fact Ct I
21:841(a)(1), dist of controlled substances Sch IV
841(b)(1)(B) Ct II, III, IX, X, XII, XIII, XIV
18:922(a)(1), dealing in firearms and ammunition
924(a) without being licensed Ct IV
26:5861(d), 5871 poss of unreg firearm Ct V and XV
21:841(a)(1), poss w/int to dist controlled
841(b)(1)(B) sub Sche II Ct VI, VII, VIII, XI,

1977		
Oct 11	1	Filed magistrate papers including complaint, appearance bond, $5,000. corp surety bond dated May 13, 1977.
Oct 11	2	Filed indictment.
Oct 11	3	Filed order fixing bail at $5,000. c/cs. Summons to be issued.
Oct 11	4	Filed praecipe for summons returnable October 19 at 9 AM. Issued summons.
Oct 17		Issued bench warrant for failure to comply with requirements of bond (sign in) per request for Diskin at direction of Mag. Weinberg.
Oct 17		Ent initial hearing on bench warrant for failure to sign-in as required by bond. Bail raised to $20,000. c/cs. Weapon and ammo now in defts personal property pending arrangements made by defense counsel to have someone other than deft pick them up.
Oct 19		Ent A & P of not guilty. TRIAL 12-12-77 AT 9:30. Pretrial motions due three weeks. Bail hearing set for 11:30 today.
Oct 25	5	Filed return on warrant, arrested Oct 17.
Oct 25	6	Filed return on summons, unexecuted.
Oct 27	7	Filed agreement to supervise deft.
Oct 27	8	filed appearance bond, $15,000. unsec PR.

Nov 18	9	Filed marshal's return on subpoena to testify Landis John Emond, Steven Loring
Nov 18	10	Filed deft Bagley's motion for severance to quash search warrant and suppress evidence, to dismiss Count IV, to suppress evidence, to dismiss Count I and to consolidate or dismiss Counts V through XV.
Nov 18	11	Filed deft Bagley's motions for discovery and for bill of particulars.
Nov 18	12	Filed notice of hearing, December 2.
Nov 18	13	Filed return on subpoena, Donald Mitchell.
Nov 23	14	Filed deft Bagley's brief in support of motions for discovery, bill of particulars, severance, quash search warrant and other motions.
Nov 23	15	Filed appli & Order for writ of habeas corpus ad test returnable Dec 12 at 9 AM of Raymond F. Hurley, Harrison Keith Millard, and Howard Nordyke. Issued writs.
Nov 30	16	Filed plntff's requested instructions.
Nov 30	17	Filed Govt's response to pretrial motions.
Nov 30	18	Filed order on defts motions severing Count I of the indictment for trial from Counts II through XV of the indictment; denying defts motion for bill of particulars, denying defts motion to suppress the evidence seized on or about May 12, denying defts motion to dismiss Count I and denying defts motion to consolidate or dismiss Counts VI through XV. Copies to counsel.
Dec 2	19	Filed additional material re: Govt's response to defts pretrial motions.
Dec 2	20	Filed praecipe for 25 regular and 10 duces tecum. Issued.
Dec 2	21	Filed defts motion to require fingerprint analysis and affidavit.

Dec 2	22	Filed defts motion for reconsideration of Court's Order on suppression of evidence seized on or about May 13, 1977.
Dec 2	23	Filed brief in support of defts motion for reconsideration.
	24	Filed affidavit in support of.
Dec 2	25	Filed notice of hearing, December 7 at 9 AM.
Dec 5	26	Filed Govts motion for reconsideration of Court's Order severing Count I of the indictment.
Dec 2		Ent order placing defts motion for discovery and bill of particulars, for severance to quash search warrant and suppress evidence, to dismiss Count IV, et al under submission.
Dec 6	27	Filed return on subpoena, Kathy Millard.
Dec 7	28	Filed Govts trial brief.
Dec 7	29	Filed Govts response to defts motion to reconsider suppresison of evidence.
Dec 8	30	Filed Govts exhibit list.
	31	Filed Govts witness list.
Dec 8	32	Filed praecipe for 10 subpoenas.
	33	Filed Supplemental brief of Bagley in support of defts motion for reconsideration.
Dec 8	34	Filed affidavit in support of motion for reconsideration
Dec 9	35	Filed defts trial brief.
Dec 9	36	Filed return on subpoenas to produce, William Knapp, John Jerentowski.
Dec 9	37	Filed return on subpoenas, James P. O'Connor, Joannie A. Vermrire, Randy Reed, Stewart R. McCurdy
Dec 9	38	Filed return on writ, Howard Nordyke.
Dec 9	39	Filed return on subpoena, Carol Emond.
Dec 9		Ent hearing on defts motion to Suppress. Court reporter—Bill Mayrand Court reserves ruling on motion to morning of trial December 12. Deft at liberty.
Dec 9		Ent order placing plntffs motion for reconsideration under submission.
Dec 12	40	Filed Govts supplemental exhibit list.

Dec 12 ENT 1ST DAY OF COURT TRIAL.
Court denies motion to suppress.

Dec 13 ENT 2ND DAY OF COURT TRIAL.
Exhibits.

Dec 14 41 Filed return on subpoenas, Byron Barton and Robert Dries, Donald E. Mitchell, James P. O'Connor

Dec 14 ENT 3RD DAY OF COURT TRIAL.
Exhibits.

Dec 15 42 Filed return on subpoenas, Howard Nordyke and T. M. Cook.

Dec 15 ENT 4TH DAY OF COURT TRIAL.
Court denies defts motions for suppression, dismissal, and to exclude exhibit 12.

Dec 16 Ent 5th DAY OF COURT TRIAL. CON'T TO 12/19/77 9:30

Dec 19 43 Filed marshal's return on subpoena to testify to John Bruce, Arnold Porter

Dec 19 44 Filed deft Bagley's decision to testify

Dec 19 ENT 6TH DAY OF COURT TRIAL.

Dec 20 ENT 7TH TRIAL—court Pltf's exhibits No 62 & 100 are withdrawn. After hearing argument Counsel Court takes case under advisement. Court will render decision on Dec 23, 1977 at 11:00 am Pltf's exhibits A-1, A-2, A-4, A-5 & A-7 admitted.

Dec 22 45 Filed marshal's return on subpoena to produce to Manger, Butch's Archery & Gun Shop

Dec 21 Ent conference on bond conditions before Mag. Sweigert. Defts condition that he not associate with wife & child stricken. $15,000. unsec corp surety bond exonerated. Lundin to submit order for Court's signature of the above.

Dec 23 Ent Court's Decision on Trial.
Court finds the deft not guilty to Count I, IV, V & XV. Court finds the deft guilty to Counts II, III, VI thru XIV of posesssion. Sentencing set for January 20 at 9:30. All exhibits pertaining to not guilty counts to be withdrawn. Deft at liberty on bond.

Dec 27 46 Filed Judgment on Decision by the Court.
Count I—Not Guilty
Ct II & III—Guilty
Ct IV & V—Not Guilty
Cts VI thru XIV—Guilty of the lessor-possession
Ct XV—Not Guilty.

1978

Jan 19 47 Filed return on writ, Harrison Keith.

Jan 20 SENTENCE: on Cts II, III, VI thru XIV
Count II—Deft is comm to Atty Gen for six months with a special parole of five years.
Count III—Deft is comm. to Atty Gen for 3 yrs, ESS, deft placed on probation for five years.
Count VI thru XIV—ISS, and deft placed on probation for five years.
Court sets appeal bond at $75,000.00 cash or corp. surety. Deft remanded.

Jan 24 48 Filed and ent Judgment and Commitment.

Jan 20 49 Filed return on J & C.

Feb 2 50 Filed defts notice of decision not to appeal.

Feb 24 51 Filed reporter's transcript of December 13 and December 19.

Mar 15 52 Filed motion and order withdrawing exhibits. 3-17-788 exhibits returned to Jerry Diskin.

Apr 14 53 Filed Motion of deft Bagley to reduce sentence.

Apr 14 54 Filed affidavit of deft in support of Rule 35 motion

Apr 14 55 Filed memorandum in support deft's Rule 35 motion.

Apr 25 Ent hearing on defts modification of sentence. Court recommends that the deft serve the balance of his sentence on work-release. Deft remanded.

May 3 56 Filed transcript of proceedings of April 25, 1978.

May 2 57 Filed modification of sentence—Court recommends remainder of sentence to be served at a work release facility.

Oct 20	58	Filed return of Writ of Habeas Corpus Ad Testificandum of Howard Nordyke.
1979		
Mar 29	59	Filed Order for issuance of bench warrant for the arrest of Hughes Anderson Bagley, to be held w/o bail. Issued warrant. CC: Prob & USAM
Mar 30		Ent. Initial hearing on probation revocation (JLW) Deft present w/ counsel Tom Hillier Preliminary hearing on probation revocation set for 4-9-79 at 11:00 a.m. before Mag. Sweigert.
Mar 30	60	Filed Order appt. Tom Hillier as counsel
Apr 3		Ent. BOND HEARING before Judge Voorhees Court Reporter—Vern Sorensen Counsel & deft present. After hearing the argument sof counsel the sworn testimony of Chris Larson, the Court sets bail at $200,000.00 c/cs. Mr. Diskin to prepare order.
Apr 5		LODGED Order imposing conditions of release—bond to be set at $200,000.00 c/cs
Apr 5	61	Filed and Ent. Order Imposing conditions of release. Bond set at $200,000.00 c/cs. copies to counsel and USAM. and Prob.
Apr 9	62	Filed marshal's return on probation warrant for deft Hughes Bagley. Deft arrested 3-29-79
Apr 9		Ent. Preliminary Hearing on Probation Revocation before U.S. Magistrate Philip K. Sweigert. Tape S137 & S138. Deft present w/ counsel. Deft in custody per Order of Judge Voorhees—to be held w/o bail. U.S. Probation Officer— Bob Thornton, present to present U.S. See Reverse for details
Apr 13		PRELIMINARY HEARING ON Probation Revocation exhibits #1 & 2 admitted. Testimony by USPO Bob Thornton, ATF Agent Smith. Court found probable cause to believe offense charged was committed by deft. Exhibits 1 & 2 withdrawn.

Apr 13	63	Filed Summary report of U.S. Magistrate of Preliminary hearing on probation revocation. The matter is bound over for a final revocation hearing, at a time to be arranged.
Apr 23	64	filed praecipe for issuance of 5 subpoenas ad testificandum for probation revocation hearing before Judge Voorhees on April 30 at 2:00 p.m. Issued in duplicate and in blank.
Apr 24	65	filed praecipe for 2 subpoenas for trial. Issued in duplicate (for Govt).
Apr 26	66	Filed Marshal's return of the following subpoenas to testify: (a) Mervin Haptonstall (b) Robert Costie (c) Chris Larson (d) Willard Lewis (e) Paul Good (f) Harry Van Tassel
Apr 27	67	Filed Deft's motion for discovery
Apr 27	68	Filed Affidavit of Thomas W. Hillier, II
Apr 27	69	Filed Deft's motion to shorten time for noting motions
Apr 27	70	Filed Deft's notice of motion—April 27, 1979
Apr 27	71	Filed marshal's return of subpoena to testify for Linda Haptonstall.
Apr 30		Ent. REVOCATION OF PROBATION HEARING before Judge Voorhees. Court Reporter—Vern Sorensen Deft present w/ counsel. Court Denies Deft's motion for continuance. Hearing cont to May 11 at 3:00 p.m. Exhibits 1 thru 10 are admitted. Exhibits withdrawn.
May 2		Ent. Rev. of Prob Hearing set for May 11 is CONTINUED to *May 14th* at 2:00 p.m. due to conflict of counsel. Counsel notified.

May 14		Ent HEARING on Probation Revocation. Ct Rpr: Vern Sorensen. Deft and counsel present. After hearing testimony of witnesses for pltf and deft—Crt cont hearing to Thurs. 5-17-79 at 10:00 a.m.
May 17		Ent. REVOCATION OF PROBATION HEARING—Ct Rptr: Vern Sorensen. Deft present w/counsel. Court finds grounds for revoking prob. Court will announce decision at 9:30 a.m. July 13th Deft remanded.
Jul 13		Court's decision on revocation hearing cont to July 20 at 9:00 a.m.
Jul 20		Ent. Court's decision on probation revocation con't to August 1, 1979 at 4:15 PM
Aug 1	72	RECOMMENDATION Deft's re: Disposition
Aug 1		Ent. REVOCATION OF PROBATION Before Judge Voorhees, Ct Rptr: Vern Sorensen Deft present w/counsel Sentence: Ct III Deft Comm 3 yrs Impr., to run consecutive to sent imposed by Special Parole Board on Ct II. Deft waives appearance at signing. Deft remanded.
Aug 2	73	ORDER Revoking probation and imposing sentence. Iss copies
Aug 20	74	MOTION under 38 USC: 2255 by deft Bagley. copies to Judge Voorhees and AUSA. *Civil Case No. C79-968V*
Aug 28	75	REQUEST Deft's for appt of counsel
Sept 4	76	ORDER appt FPD as counsel for petitioner Bagley
Sept 5	77	ORDER auth payment to Tom Hillier in the amt of R695.00.
Sept 5	78	AFFIDAVIT John Lundin's in support of petitioner's 2255 motion.
Sept 10	79	MOTION *et Parte* (Deft's) for transcript.
Sept 18	80	TRANSCRIPT of proceedings on December 9, 1977 at 2:30 p.m. before Judge Voorhees Original only.

Sept 21	81	TRANSCRIPT of proceedings commencing on April 30, 1979 at 2:00 p.m. Orig and 1 copy
Oct 1	82	APPLICATION & ORDER for writ of habeas corpus ad testificandum for deft Bagley on 10-12-79 at 2 PM Issued writ
Sept 27	83	ORDER that evidentiary hearing will be held on 10-12 at 2 PM. US directed to file answer to petition by 10-5
Sept 17		ORDER CON'T: Any response to govt's answer shall be filed by 10-11-79 copy to counsel
Sept 28	84	PRAECIPE For subpoenas to testify in evidentiary hearing Issued in blank.
Oct 2	85	RESPONSE Govt's to motion to vacate, set aside or correct sentence.
Oct 12		EVIDENTIARY HEARING on 2255 motion before Judge Voohees Ct Rptr: Vern Sorrensen Petitioner present w/counsel Court takes matter under submission.
Oct 16	86	ORDER Denying petitioner's mot to vacate, set aside or correct sentence. Copies to counsel.
Nov 6	87	ORDER auth Vern Sorensen (Ct Rptr) payment for transcript of prob revoc hearings in amt of $97.50.
Dec 4	88	RETURN Marshal's at Writ of Habeas Corpus Ad Testificandum. Deft delivered to King County Jail at Seattle 10-9-79. Deft delivered to USP McNeil 11-20-79.
1980		
Feb 5	89	MOTION Bagley's to set aside Judgment in Order to correct a clerical error and restore the Petitioner's right of appeal.
Feb 5	90	NOTICE of mtn—2-15-80
Feb 5		Lodged Judgment
Feb 15	91	JUDGMENT For reasons stated in Court's order of Oct 16, 1979, Clerk directed to ent judgment for United States.
Feb 15	92	JUDGMENT ent in favor of the United States, respondent.

Oct 21	102	AFFIDAVIT deft's, in support of mtn for discovery.
Oct 21	103	NOTICE deft's, of mtn for discovery
Oct 21	104	CERTIFICATE deft's, of service by mail (all 10-21-80 documents)
Oct 21	105	MEMORANDUM deft's, of points & authorities in support of 2255 motion
Oct 31	106	MOTION Govt's for extension of time w/in which to answer.
Nov 7	107	ORDER granting plntff's motion for ext of time w/which to file its answer to deft's motion pursuant to Title 28 § 2255. cc: cnsl
Nov 26	108	TRANSCRIPT testimony of James P. O'Connor 12-12-77
Nov 26	109	ANSWER govt's, to petitioner's 2255 mtn
Dec 11	110	REPORTER'S TRANSCRIPT original only, of proceedings before DSV 12-13-77 (transcript forwarded to JLW per court reporter)
Dec 13	111	TRAVERSE petitioner's, to govt's response pursuant to 2255
Dec 13	112	NOTICE petitioner's, of service by mail of doc #111
May 15	113	JUDGMENT (CCA) affirming lower court decision cc: cnsl, USMO, USPO, DSV
Sept 24	114	ORDER (DSV) adopting report & recommendation; remanding case to JLW, FPD apptd to represent petitioner; mtn for discovry is stricken.
Oct 16	115	APPLICATION & ORDER (PKS) for writ of H/C ad testificandum to appear 11-2-81, 11 AM, JLW
Nov 20	116	LETTER to cnsl from JLW re: schedule as to discovery mtn; 11-30-81, response from govt to deft's discovery request; 1-18 & 1-18, 1982 Evidentiary hrg.
Dec 2	117	ORDER (JLW) extending time to complete discovery to 12-7-81.
Dec 7	118	STIPULATION of procedural history
Dec 8	119	MOTION deft's ex parte for order directing USMO to transport petitioner

Dec 8	LODGED Order directing USMO to transport deft
Dec 8	120 AFFIDAVIT deft's, in support of mtn for order to transport deft
Dec 10	ENT (DSV) Court DENIES petitioner's mtn for order direction USMO transport petitioner to Terminal Island
1982	
Jan 18	ENT (JLW) EVIDENTIARY HRG ON 2255 MTN: AUSA Marshall, deft cnsl Martin, deft present. Court hrs testimony. Def cnsl to file argument in memo form on 1-22-82; Govt to file response 1-27-82; JLW will prepare & submit a report & recommendation. deft Bagley waived right to be present at future proceedings.
Jan 18	121 EXHIBIT LIST
Jan 18	122 STIPULATION re testimony of John W. Lundin
Jan 22	123 MEMORANDUM def cnsl, in support of petitioner's claim
Jan 27	124 RESPONSE govt's, to petitioner's post-hrg memorandum
Feb 10	*Received 2255 mtn for deft (note deft filed 2255 mtn 10-21-80)
Feb 23	125 FINDINGS & RECOMMENDATIONS proposed for disposition of 2255 mtn
Feb 23	LODGED Order denying 2255 mtn
Mar 5	126 OBJECTIONS deft's, to proposed findings & recommendations for disposition
Mar 5	127 NOTICE deft'ss, of objections for 3-26-82
Mar 10	128 OBJECTIONS petitioner's to recommendation & findings
Mar 10	129 CERTIFICATE of service of objections
Mar 25	130 RESPONSE govt's, to petitioner's objections to findings & recommendations
Apr 23	131 REPORTER'S TRANSCRIPT proceedings before JLW, 1-18-82 (2255 mtn hrg)
May 12	132 ORDER (DSV) DENYING petitioner's mtn for 2255 cc: JLW, cnsl, petitioner
May 24	133 NOTICE deft's, of appeal
May 26	*Sent notice of appeal to Court of Appeals cc: AUSA, petitioner, Martin

***Feb 10	134 MOTION deft's, to vacate, set aside, or correct sentence (2255) NOTE; 2255 mtn was filed on Feb 10, 1982—not given new civil number at that time. cc: AUSA, DSV. *Civil No. C82-721V*
June 23	135 ORDER (PKS) for service & return of 2255 mtn cc: AUSA, deft
July 14	136 NOTICE deft's, of change of address: RR1, Box 177, Sioux City, Iowa 51108 cc:AUSA, DSV
July 26	137 ORDER (CCA) setting time schedule for appeal of 2255: desig of transcript due 8-2-82 applt's brief due 8-31-82 apple's brief due 10-1-82 **Per CCA desig of record due same time as transcript desig**
Aug 2	138 DESIGNATION deft cnsl, of reporter's transcript for appeal of 2255
Aug 3	*Sent certificate of record to Court of appeals for 2255 appl
Aug 13	139 ORDER (PKS) to show cause cc: Pet and AUSA
Aug 23	140 RESPONSE govt's, to order to show cause & mtn for late answer
Aug 24	141 ORDER (PKS) Granting respondents mtn to file a late answer—DUE 9-3-82 cc: petitioner & respondent
Sept 3	LODGED Mtn & Order for extension of time to file answer.
Sept 9	141 ORDER (PKS) for extension of time to file answer to 9-10-82
Sept 10	LODGED MOTION AND ORDER for extension of time within which to file an answer (Second Motion) Govt's
Sept 13	142 ORDER (PKS) extending time within which to file an answer to 9-24-82
Sept 16	143 TRANSCRIPTS CR's 1-20-78 Before DSV
Sept 24	144 ANSWER Govt's to Petitioners Motion Pursuant to 28 U.S.C. 2255
Oct 14	145 CERTIFICATE OF SERVICE

Oct 14	146	PETITIONER'S TRAVERSE to Governments late response
Oct 15	147	TRANSCRIPT CR *COPY* proceedings DSV 8-1-79
Oct 16	148	ORDER (CCA) Granting Applee Mtn for ext. of time to file brf. desg. & brf due 10-22-82 Reply due 11-8-82
Oct 20	149	REPORT AND RECOMMENDATION (PKS) RE: 28 USC 2255
Oct 20		LODGED Order Re: Deft. Mtn Pursuant to 28 USC 2255
Oct 22	150	DESIGNATION Appellee clerk's rec. on appeal.
Oct 27	151	DESIGNATION APPLNT Of clerk's record on appeal.
Nov 5	153	NOTICE OF MOTION Noting Deft. Object. to Magistrates Report & Recommendation for 11-26-82
Nov 5	154	OBJECTION Petitioner's to Magist. Report & Recommend.
Nov 17	155	ORDER (DSV) DENYING Pet. Rul 2255 Mtn. Apprved Mag. Report & Rec. C. Deft Ausa & Mag. FDP.
Nov 19	156	ORDER Extending time for appllant to file reply brief to 11/16/82
Dec. 6	157	NOTICE deft's of appeal *(C82-271V)*
Dec. 18		Sent Notice of Appeal, cc: docket, paymt notifctn form, cert. of record, informatn form. CC: notice and info. form to cnsl, deft. USMO, USPO. Docketing Statement to both parties.
Dec 29		*Sent record on appeal #C80-1044V (82-3303) TO CCA
DEC 29		*Sent record on appeal #C82-721V to CCA (83-3516)
Feb 9		**SUPPLEMENTAL RECORD TRANSCRIPT sent. 2-9-83. ON APPEAL.
Feb 14		***SUPPLEMENTAL RECORD ON APPEAL.
Feb 24		***TRANSCRIPTS from 1977.
March 2	158	LETTER from CCA Supplemental record on appeal consisting of reporter's transcript.

Apr 4	159	ORDER (CCA) From Conference atty. advising appellee's & appellant's brief's when to be filed also this order is subject to reconsideration by a judge if any objection is filed within 10 days of entry of this order.
Nov 26	160	ORDER (CCA) GRANTING an extension of time to and including 12-5-83 for appellee. (This order is subjeet to reconsideration if any opposition is filed within 10 days of the entry of this order.)
1984		
Mar 14	161	ORDER (CCA) Judgment of district court in this cause be and hereby reversed and remanded. cc: AUSA, DEFT CNSL, USPO, USMO, DIST JUDGE, DSV.
Mar 20	162	LETTER from Deft., asking the Judge to "re-issue the mandate and send a copy to his current address in order that he might perfect an appeal."
Mar 29	163	ENT (DSV) Status conference set for 4-5-84 at 2:00 p.m. Cnsl adv.
Apr 2	164	ENT (DSV) Status conf. STRICKEN for 4-5-84. New date to be set.
Apr 6	165	ENT (DSV) Status conference. Had. Govt. has mot to recall mandate pending b4 9th circuit Govt. has applied for permission to file Writ Of Cert. No trial date has been set Govt. to file mot re:cont. of trial.
Apr 20	166	MOTION Govt's for order excluding time under the speedy trial act noted for 5-4-84 w/attached Affidavit of David Marshall
Apr 20		***LODGED Order excluding time pursuant to the Speedy trial act.
Apr 24	167	ORDER (DSV) Excluding time pursuant to the speedy trial act. cc: AUSA, DEFT CNSL, USPO, USMO. (EOD 4-25-84).
Apr 30	168	MANDATE (CCA) Order recalling mandate and GRANTING stay of mandate. cc: AUSA, DEFT CNSL, USPO, USMO, US DIST JUDGE. (EOD 5-01-84).
July 16	169	MOTION and affidavit to proceed in forma pauperis.

July 16	170	MOTION 2255
Aug 3	171	ORDER (DSV) of REFERENCE to PKS cc: AUSA, PKS. EOD 8-3-84
Aug 10	172	ORDER (PKS) For service and return, 2255 mot. within twenty-one days after such service, the U.S. shall file and serve an answer thereto, in accordance w/Rule 5 of the Rules governing 2255 cases. cc: AUSA DEFT CNSL. DEFT.
Aug 23	173	RESPONSE Govt to deft's 2nd 2255 mtn (pv)
Sept 4	174	COVER LETTER From deft. advising of documents sent.
Sept 4	175	MOTION For appointment of cnsl.
Sept 4	176	CERTIFICATE OF service by mail.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. CR77 330 V

UNITED STATES OF AMERICA, PLAINTIFF,

v.

HUGHES ANDERSON BAGLEY, DEFENDANT.

DEFENDANT BAGLEY'S DISCOVERY MOTIONS AND MOTION FOR BILL OF PARTICULARS

Hughes Anderson Bagley, through his attorney John W. Lundin, hereby moves that the Court order the plaintiff, United States of America, to turn over the following material to him, pursuant to Federal Rule of Criminal Procedure 16, 12, 7(f) and the Court's inherent powers:

I
DISCOVERY MOTION

1. Notice of the Government's intention to use any evidence or the fruits thereof, which would be the subject of a Rule 12(b)(3) motion, i.e., a motion to suppress which must be raised prior to trial. It is moved that the notice specify with particularity, the evidence to be used.

2. Copies of written or recorded statements made by the defendant and the substance of oral statements made by the defendant which the government intends to use at trial, whether made before or after arrest, and recorded testimony of the defendant before a grand jury relating to the offenses charged.

3. A copy of defendant's prior criminal record, if any.

4. Copies of books, papers, documents, photographs, tangible objects which are material to the preparation of a

defense, or are intended for use by the government at trial, or belonging to or obtained from the defendant.

5. Copies of all examinations, scientific tests or experiments relating to the subject indictment, material to the preparation of the defense, or intended for use by the government at trial.

6. The names and addresses of witnesses that the government intends to call at trial. Also the prior criminal records of witnesses, and any deals, promises or inducements made to witnesses in exchange for their testimony.

7. The names and addresses and copies of recorded statements of all persons who have knowledge pertaining to the case, or who have been interviewed by federal agents in connection with the case, who the government does not intend to call as witnesses.

8. Notice of copies of any and all recorded conversations, including wiretaps, recordings, videotapes or any other similar mechanical, stenographic or electronic procedures utilized by the government in this case, whether or not the government intends to use them in evidence.

9. Copies of all Jencks Act material is requested at least ten (10) days prior to the date of trial.

10. Notice of and copies of any material documents, tangible objects, testimony, evidence or other material in the custody of the government or known to the government which is exculpatory to the defendant, which may be favorable to the defendant, or which would assist in the preparation of his defense, under *Brady* v. *Maryland*, 373 U.S. 83 (1963), and subsequent cases. This would include, but not be limited to:

(a) Felony records of all persons the government intends to call as witnesses;

(b) Promises or representations made to any persons the government intends to call as witnesses at trial, including but not limited to promises of no prosecution, immunity, lesser sentence, etc.

(c) Names and addresses of persons spoken to by the government regarding the case, whether or not such persons are intended to be called by witnesses, who can either give favorable information regarding the defendant, or who

can testify to inconsistent statements made by government witnesses, or who can testify adversely to the government.

11. All information which would establish the reliability of the Milwaukee Railroad Employees in this case, whose testimony formed the basis for the search warrant.

The defendant moves that said material be delivered to his attorney by no later than December 5, 1977 so that it can be utilized in the preparation of this defense.

II
MOTION FOR BILL OF PARTICULARS

1. With respect to Count I of the indictment, state:

a. Whether defendant Bagley allegedly provided Landis Jared Emond with false identification and purchased a car for him *before* Emond was indicted on any charge.

b. Whether after allegedly providing Emond with false identification and purchasing a car, Emond returned after the indictment came down and entered a not-guilty plea to the court.

c. When defendant Bagley allegedly provided Emond with false identification and purchased a car for him and sold firearms to raise money for him, as is alleged in the indictment.

d. Whether money allegedly raised for Emond through the sale of firearms was ever given to Emond; if so, when and where.

e. What evidence is there to show that defendant Bagley knew that Emond committed certain offenses against the United States, as is charged in Count I of the indictment.

2. With respect to counts II and III of the indictment, state:

a. To whom the valium was distributed;

b. The quantities of valium allegedly distributed.

3. With respect to Count IV of the indictment, state:

a. What overt acts did defendant Bagley engage in which would indicate that he "engaged in the business of dealing in firearms and ammunition" without being so licensed to do so, as alleged in the indictment.

b. Whether defendant Bagley was arrested on a similar charge in 1970; the details of such arrest; and the disposition of the charges against him.

c. A list of any guns or ammunition allegedly possessed by defendant Bagley incident to the earlier arrest on similar charges, and an indication of which of those weapons are "antique" weapons, not subject to federal registration and licensing.

d. Copies of all published information made available to the public by the Department of Treasury providing guidance concerning elements of the offense of engaging in the business of selling firearms or ammunition without a license, or providing guidance regarding the ability to inidividuals to possess, acquire, or sell firearms without falling under federal regulations.

4. With respect to counts V and XV of the indictment, state:

a. Any actions or evidence showing that defendant Bagley "knowingly" possessed the material he allegedly possessed.

b. If the material was found pursuant to the execution of a search warrant, describe exactly where they were found and contained in defendant Bagley's residence.

5. With respect to counts VI through XV of the indictment, state:

a. What evidence or overt acts, if any, exist to show that defendant Bagley intended to distribute the material charged in the indictment.

b. If the material was found in defendant Bagley's residence pursuant to the execution of a search warrant, state precisely where this material was found and how it was packaged.

6. With respect to Count IV, state:

a. If firearms were found in defendant Bagley's house pursuant to the execution of a search warrant, and whether the government intends to introduce such firearms and ammunition as evidence against Mr. Bagley.

b. Describe what weapons and ammunition the government intends to introduce against Mr. Bagley, where they were found, and how they were packaged or wrapped.

DATED this 18th day of November, 1977.

/s/ John W. Lundin
JOHN W. LUNDIN
Attorney for Defendant Bagley

DEPARTMENT OF THE TREASU... BUREAU OF ALCOHOL, TOBACCO AND FIREA...

UNIQUE IDENTIFIER 490303772023?

CONTRACT
FOR PURCHASE OF INFORMATION AND PAYMENT OF LUMP SUM THEREFOR

It is agreed by and between the United States of America, and Jim O'Conner, designated herein as the vendor, that said vendor will furnish to the Regional Director, Bureau of Alcohol, Tobacco and Firearms, information concerning the following:

That he will provide information regarding T-I and other violations committed by Hughes A. Bagley, Jr.; that he will purchase evidence for ATF; that he will cut in an undercover capacity for ATF; that he will assist ATF in gathering of evidence and testify against the violator in federal court.

that upon the receipt of such information by the Regional Director, Bureau of Alcohol, Tobacco and Firearms, or his representative, and upon the accomplishment of the objective sought to be obtained by the use of such information to the satisfaction of said Regional Director, the United States will pay to said vendor a sum commensurate with services and information rendered; that the vendor will not divulge such information to any person other than the said Regional Director, or his authorized representative; that said vendor will not represent himself to be an employee of the United States of America; and that he has been advised that, if he is required by law to file an income tax return, the sum shown below should be included on the return as earned income.

Signed this 3rd day of May, 19 77, at Seattle, Washington, .

SUM TO BE PAID TO VENDOR $ 300 00

UNITED STATES OF AMERICA

James P. O'Connor
SIGNATURE OF VENDOR

Donnell C. Algh
SIGNATURE OF [illegible]

James P. O'Connor

APPROVAL RECOMMENDED (Signature)

SPECIAL AGENT	RESIDENT AGENT IN CHARGE	SPECIAL AGENT IN CHARGE
[signature]	Robert M Whitsell	Donnell C. Algh

After the information stated above has proven worthy of compensation, the special agent will prepare ATF Form 32, Payment to Vendor, which will contain the recommended amount to be paid and justification for the payment. This will include the results of the information, such as seizures, names of persons arrested. If an illicit distillery is seized, the daily producing capacity of the distillery will be included.

DESIGNATED AGENT

NAME	ADDRESS

PLAINTIFF'S EXHIBIT

ATF FORM 164-A (1-74) PREVIOUS EDITIONS ARE OBSOLETE

Department of the Treasury – Bureau of Alcohol, Tobacco and Firearms

PAYMENT TO VENDOR

TO: REGIONAL DIRECTOR
Bureau of Alcohol, Tobacco and Firearms
Seattle District Regional Office

INSTRUCTIONS: Special Agent will prepare in Original and 3 copies and submit with executed Forms 25 to the group supervisor/Resident Agent who will forward to the SAC who will forward all copies to the Regional Director. After approval and recommendation of amount the Regional Director will retain one copy. Return three copies to the SAC who will retain one copy and send one to Group Supervisor/Resident Agent and one copy to the Special Agent.

UNIQUE IDENTIFIER
4908 0377 2023 F

In connection with above numbered investigation, I request that a reward in the sum of $ 500.00 be paid to Donald Mitchell who resides at _____ for original information that resulted in the accomplishment listed below.

I have executed Form 25 – Application and Public Voucher for Reward of Original Information and attached them to this request.

Justification for payment of reward: (state the type and magnitude of the violation, names of persons arrested, seizures made, and other pertinent information which will substantiate and support the recommended reward.

This investigation covered a period of approximately three months from April through June 1977. Donald Mitchell actively assisted ATF, Seattle, Washington in making several undercover buys from Hughes A. Bagley, the violator. Bagley was engaged in the business of dealing firearms without a license, actively aiding and abetting a federal fugitive, and possessed controlled substances. Mitchell through his continual association with Bagley assisted ATF in obtaining probable cause to secure a search warrant which was subsequently served on Bagley's residence. Pursuant to the search warrant, 1 Anti-Tank Rifle Grenade (HEAT) was seized in addition to a silencer made into a rifle, various controlled substances and 29 T-I firearms.

In addition, he testified in Federal Court on December 12, 1977 in relation to the above circumstances.

On December 23, 1977, U. S. District Court Judge Donald Voorhees found Hughes A. Bagley guilty of two counts of narcotics violations, and eight counts of misdemeanor violations.

PLAINTIFF'S EXHIBIT 3

SPECIAL AGENT (Signature)	POST OF DUTY	DATE
	Seattle, Washington	12/21/77

RECOMMENDED APPROVAL BY	AMOUNT	DATE
GROUP SUPERVISOR/RESIDENT AGENT (Signature) Robert M. Winkell	500.00	1/3/78
SPECIAL AGENT IN CHARGE (Signature) Darnell C. Agl	300.00	1/3/78

REGIONAL DIRECTOR'S USE ONLY

APPROVED BY	AMOUNT	DATE
REGIONAL DIRECTOR (Signature)		
DATE FORM 25 FORWARDED TO FISCAL DIVISION:		

ATF Form 32 (3-73)

GPO 944-603

Department of the Treasury – Bureau of Alcohol, Tobacco and Firearms

PAYMENT TO VENDOR

TO: REGIONAL DIRECTOR
Bureau of Alcohol, Tobacco and Firearms
Seattle District Regional Office

INSTRUCTIONS: Special Agent will prepare in Original and 3 copies and submit with executed Forms 25 to the group supervisor/Resident Agent who will forward to the SAC who will forward all copies to the Regional Director. After approval and recommendation of amount the Regional Director will retain one copy. Return three copies to the SAC who will retain one copy and send one to Group Supervisor/Resident Agent and one copy to the Special Agent.

UNIQUE IDENTIFIER
4908 0377 2023 F

In connection with above numbered investigation, I request that a reward in the sum of $ 500.00 be paid to Jim O'Connor who resides at _____

for original information that resulted in the accomplishment listed below.

I have executed Form 25 – Application and Public Voucher for Reward of Original Information and attached them to this request.

Justification for payment of reward: (state the type and magnitude of the violation, names of persons arrested, seizures made, and other pertinent information which will substantiate and support the recommended reward.

This investigation covered a period of approximately three months from April through June 1977. Jim O'Connor actively assisted ATF, Seattle, Washington in making several undercover buys from Hughes A. Bagley, the violator. Bagley was engaged in the business of dealing firearms without a license, actively aiding and abetting a federal fugitive, and possessed controlled substances. O'Connor through his continual association with Bagley assisted ATF in obtaining probable cause to secure a search warrant which was subsequently served on Bagley's residence. Pursuant to the search warrant, 1 Anti-Tank Rifle Grenade (HEAT) was seized in addition to a silencer made into a rifle, various controlled substances and 29 T-I firearms.

In addition, he testified in Federal Court on December 12, 1977 in relation to the above circumstances.

On December 23, 1977, U. S. District Court Judge Donald Voorhees found Hughes A. Bagley guility of two counts of narcotics violations, and eight counts of misdemeanor violations.

PLAINTIFF'S EXHIBIT

SPECIAL AGENT (Signature)	POST OF DUTY	DATE
[signature]	Seattle, Washington	12/21/77

RECOMMENDED APPROVAL BY	AMOUNT	DATE
GROUP SUPERVISOR/RESIDENT AGENT (Signature) Robert M. Wendell	500.00	1/3/78
SPECIAL AGENT IN CHARGE (Signature) Darnell C. Alston	300.00	1/3/78

REGIONAL DIRECTOR'S USE ONLY

APPROVED BY	AMOUNT	DATE
REGIONAL DIRECTOR (Signature)		
DATE FORM 25 FORWARDED TO FISCAL DIVISION:		

ATF Form 32 (3-73)

GPO 844-803

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

PAYMENT RECEIPT FOR INVESTIGATIVE EXPENSES INFORMATION AND/OR TREASURY CHECK

DATE RECEIVED	RECEIVED FROM (Name & Title)
[illegible]	[illegible] Special Agent
AMOUNT RECEIVED $ [illegible]	**AMOUNT RECEIVED** [illegible] AND [illegible]/100
METHOD OF PAYMENT ☒ CASH ☐ CHECK ☐ MONEY ORDER	IF CHECK OR MONEY ORDER, SHOW NUMBER AND OTHER IDENTIFYING DATA
INVESTIGATIVE EXPENSES ☐ SUBSISTENCE ☒ OPERATING EXPENSES ☐ MISC. EXPENSES	
UNIQUE IDENTIFIER [illegible]	**RECEIVER'S SIGNATURE** [illegible]

ATF F 3220.1 (2-76) PREVIOUS EDITION WILL BE USED

[BEST AVAILABLE COPY]

PLAINTIFF'S EXHIBIT

DEPARTMENT OF THE TREASURY · BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

PAYMENT RECEIPT FOR INVESTIGATIVE EXPENSES INFORMATION AND/OR TREASURY CHECK

DATE RECEIVED	RECEIVED FROM (Name & Title)
1-4-78	[illegible]

AMOUNT RECEIVED	AMOUNT RECEIVED
$ [illegible]	[illegible] AND No/100

METHOD OF PAYMENT: [X] CASH [ ] CHECK [ ] MONEY ORDER

IF CHECK OR MONEY ORDER, SHOW NUMBER AND OTHER IDENTIFYING DATA

INVESTIGATIVE EXPENSES: [ ] SUBSISTENCE [X] OPERATING EXPENSES [ ] MISC. EXPENSES

Subvoucher No. Ey-78-14

UNIQUE IDENTIFIER	RECEIVER'S SIGNATURE
4[illegible]777423	[illegible] for L. E. Mitchell

ATF F 3220.1 (2-76) PREVIOUS EDITION WILL BE USED

[BEST AVAILABLE COPY]

PLAINTIFF'S EXHIBIT

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

October 29, 1981

Francis J. Diskin
Assistant United States Attorney
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, WA 98104

RE: *Hughes Anderson Bagley, Jr., Petitioner* v. *Walter R. Lumpkin, Warden, Respondent.*
NO.: C80-1044V (CR77-330V)

Dear Mr. Diskin:

We request copies of the following documents for use in this case:

1. Copies of Chapters B (Sensitive Situations/Significant Investigations and Cases), D (Informant Development, Use and Control), and G (Rewards and Purchases of Information) from the Revision of ATF 0 3210.7A in effect in 1977. Please note that the Petitioner has received copies of these Chapters that became effective on 12-14-79.

2. Copies of any other ATF policies, guidelines or instructions involving the same or similar topics that were in effect during 1977.

3. Any evidence of instructions given to either James O'Connor or Donald E. Mitchell regarding their participation in the investigation of the Petitioner.

4. Copies of any statements made by O'Connor, Mitchell or any Government agent or attorney regarding reimbursements or payments of any kind to O'Connor, Mitchell or informants for participation in the investigation of Petitioner.

5. The ATF informant identification and control files for O'Connor and Mitchell.

6. To the extent that any of the following are not contained in the informant identification and control files for

O'Connor and Mitchell, copies of the following forms generated during the investigation of Petitioner:

A. SF 1012
B. SF 1129
C. SF 1166
D. SF 1195
E. ATF F 25
F. ATF F 32
G. ATF F 164-A
H. ATF F 3220.5
I. ATF F 3270.1
J. ATF 3220.1

Please note that if the documents received under requests 1 and 2 (above) contain material variations from the 1979 revisions in our possession, we reserve the right to seek additional discovery.

7. Unedited or uncensored copies of all the documents Petitioner received through his FOIA request, including but not limited to those attached to this discovery request.

8. Copies of any written agreements between either O'Connor or Mitchell and any government agent or attorney.

9. Any additional documents, not covered by the above request, that relates to the 1977 investigation of the Petitioner through O'Connor and Mitchell.

To the extent that any of the above discovery requests are duplicitive, one copy each of the requested documents will be sufficient.

Please let me know at the earliest possible date of any objections to the above discovery request.

Very truly yours,

Michael G. Martin
Assistant Federal Public Defender

CC: United States Magistrate John L. Weinberg
Hughes Anderson Bagley

Supreme Court of the United States

No. 84-48

UNITED STATES, PETITIONER,

v.

HUGHES ANDERSON BAGLEY

ORDER ALLOWING CERTIORARI. Filed *November 13, 1984.*

The petition for a writ of certiorari to the *United States Court of Appeals for the Ninth Circuit* is granted.